

DECISION ON PETITION ROUTING SLIP

Application No.: 10531260



Art Unit: 2164

For Director's Secretary:☐ **Granted**☒ **Denied**☐ **Dismissed**

- ☒ Decision to be reviewed and signed by Director
- ☒ Mail Decision & enter decision in Petition Database
- ☒ Forward a copy of the mailed decision to IFW for scanning
- ☒ Enter Paper Nos and the decision in PALM
- ☐ Other

For TECH Support Staff:☐ Process and enter Paper Nos. ☐ Charge fee to D.A. No☐ Other☐ Forward file to **Quality Assurance
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,260

04/13/2005

James Scott Tarbell

PTB-4942-5

4670

23117 7590 06/24/2009
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EXAMINER

CHOI, YUK TING

ART UNIT

PAPER NUMBER

2164

MAIL DATE

DELIVERY MODE

06/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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JUN 24 2009

TECHNOLOGY CENTER 2100

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In re Application of: TARBELL et al.
Application No. 10531260
Filed: April 13, 2005
Atty. Docket No.: PTB-4942-5For:
METHOD, SYSTEM AND SOFTWARE
FOR JOURNALING SYSTEM OBJECTS

DECISION ON PETITION
UNDER 37 CFR § 1.181

This is a decision on the petition, filed on April 3, 2009, under 37 C.F.R. § 1.182 to request acceptance of the Pre-Appeal Brief Request for Review filed on March 10, 2009. The Request has been treated as a petition under 37 C.F.R. § 1.181 to review the panel decision.

The petition is **DENIED**.

RELIEF REQUESTED

In support of the petition, petitioner asserts that the section "What actions will terminate the panel's review?" of the OG Notice dated July 12, 2005 indicates that an after-final amendment filed after the filing of the request will terminate review, and states that the after-final amendment was filed electronically before the request. Thus, petitioner is requesting (1) withdraw the Notice of Panel Decision from Pre-Appeal Brief Review; (2) enter the Pre-Appeal Brief Request filed March 10, 2009 as timely filed; and (3) issue a new Notice of Panel Decision from Pre-Appeal Brief Review that addresses the merits of the Request.

RULES AND PROCEDURES

The relevant portions of the "New Pre-Appeal Brief Conference Pilot Program", OG Notices, July 12, 2005 are reproduced below:

. What actions will terminate the panel's review?

If applicant files any of the following responses after filing a request, but prior to a decision by the appointed panel of examiners assigned to conduct the review, the review process will end and a decision will not be made on the merits of the request:

- an appeal brief
 - a request for continued examination (RCE)
 - an after-final amendment
 - an affidavit or other evidence
 - an express abandonment
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3. Content of Request:

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c. File the request with the notice of appeal.

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e. **No after-final or proposed amendments may accompany the request.**

A request that fails to comply with the above noted submission requirements may be dismissed.

7. Time Periods Before/After a Panel Decision:

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The time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. To the extent that any existing USPTO rule is inconsistent with this pilot program, the rule is waived until regulations directed to pre-appeal brief conferences are promulgated, or the pilot program is ended. For example, if a request for a pre-appeal brief conference is filed with a notice of appeal, the time period set in 37 CFR 41.37(a)(1) is waived so that an appeal will not stand dismissed if an appeal brief is not filed within two months of the filing date of a notice of appeal, but is filed within one month of the decision on the request.

8. Administrative Matters:

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“ Panel decisions will not be petitionable because a decision to maintain a rejection is subject to appeal. A pre-appeal brief conference panel decision that the application remains under appeal is not final agency action for purposes of court review. An applicant dissatisfied with the result of the appeal conference must pursue the appeal before the Board of Patent Appeals and Interferences”
[Emphasis added.]

The relevant portion of 37 CFR 1.181(f) states:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

DECISION

Pursuant to the "Pre-Appeal Conference Program" Notice *supra*, the Notice of Panel Decision dated March 30, 2009 is not petitionable and reviewable under 37 CFR 1.181.


A review of the application history indicates that the Pre-Appeal Brief Request for Review was filed on the same date as the After Final Amendment, i.e. March 10, 2009. Petitioners argue that the After-Final Amendment was filed electronically before the request. However, the items filed on the same day are considered as having been filed together, irrespective of the actual time of filing of the specific items. Accordingly, the After Final Amendment is considered to have been filed with the Pre-Appeal Brief Request for Review of the Final office action, on March 10, 2009. As noted in the OG notice reproduced above, **No after-final or proposed amendments may accompany the request.**

For the above stated reasons, the petition is **DENIED**. The Notice of Panel Decision from Pre-Appeal Brief Review will not be withdrawn.

As noted in the Advisory Action mailed on March 18, 2009, the After-Final Amendment filed on March 10, 2009, has been entered.

The time for filing an Appeal Brief continues to run from March 10, 2009, the receipt date of the Notice of Appeal, and is extendible under 37 CFR 1.136 (see OG Notice: . Time Periods Before/After a Panel Decision section reproduced above)

Any inquiry concerning this decision should be directed to Mano Padmanabhan whose telephone number is (571) 272-4210.


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NRR:mp